

expensive and technologically limiting "channel mapping" equipment.

Discussion

Each of the members of the Coalition either operates or is now developing a wireless cable system(s) in various markets throughout the country. The Coalition wholeheartedly endorses the Commission's proposal to permit ITFS licensees to "channel load", i.e., to transmit the minimum 80 hours of instructional programming on one channel, as a means to eliminate the fiction of channel mapping and thereby permit a more efficient and productive use of the spectrum. However, the Coalition strongly urges the Commission not to adopt an across-the-board sunset date tied to the perceived availability of digital compression equipment. Such action would likely sound a death knell for wireless cable operations and distance learning opportunities in many markets, particularly small, rural markets. The Coalition also urges the Commission to refrain from adopting additional, unnecessary regulatory requirements regarding the scheduling and/or use of ITFS programming. Like the practice of channel mapping, channel loading

that a relocation of the per channel minimum use requirements may be appropriate in order to permit a more flexible leasing scheme that will benefit and nurture ITFS operations." Notice at ¶14.

Second, the Commission agreed with commenters in the Public Notice proceeding that channel mapping is a fiction that unnecessarily increases costs. The Commission stated that "if we allow the diversion of all instructional programming to one channel by the use of channel mapping technology, it is senseless to prohibit the same result by the use of less costly channel loading." Id. at ¶15.

Third, the Commission recognized that channel loading could increase a wireless cable operator's channel capacity which, in turn, would increase its ability to compete. The Commission stated that "we believe that the current needs of ITFS licensees for funding, of wireless cable operators for channel capacity, and of the cable subscribing public for viable multichannel alternatives all favor" the channel loading proposal. Id. Based on these benefits, as well as the well-documented technological shortcomings of channel mapping technology,² the Commission proposed to permit channel loading on an interim basis.

The Commission's analysis was on target. Indeed, the practice of channel loading offers the quintessential win-win situation. Wireless cable operators will be able to realize tremendous cost

² These shortcomings include the viewer's inability to watch one channel while tape-recording another channel, or utilize "picture-in-a-picture" features without installing costly additional equipment. See Notice at n.9.

savings, freeing up significant capital resources for system and service expansion. ITFS entities will benefit as the opportunities for distance learning increase and the viewing public will benefit as wireless cable becomes a more viable and effective competitor in the multichannel distribution marketplace. Channel loading is a concept that should become a reality as soon as possible.³

II. ADOPTION OF AN INFLEXIBLE SUNSET DATE WOULD NOT SERVE THE PUBLIC INTEREST.

One troublesome aspect of the Commission's proposal is its plan to permit channel loading only "on a temporary basis, for between three to five years, until digital compression technology is a viable alternative, technologically and economically." *Id.* at ¶16. According to the Commission, the "balance of licensing criteria in the ITFS service will be deeply affected by the arrival of digital compression technology," which is predicted to occur within two years. *Id.* at ¶15.

Of course, the mere fact that compression technology may be "available" in most markets in several years does not mean that it will be an economically or technically "viable" alternative in all markets in three years, five years or even ten years. For example, certain well-financed large system operators in major markets may indeed have the financial, managerial and technical resources to convert to digital compression as soon as the technology becomes available. As these systems typically face competition from

³ In this regard, the Coalition urges the Commission to act expeditiously in adopting new rules.

entrenched cable operators, they also have a very real need to expand channel capacity as soon as possible. By contrast, small and rural market operators typically find it much more difficult to secure adequate financing due to their limited subscriber base, low cash flow and narrow operating margins. It is very unlikely such operators will be able to convert to digital compression technology in the foreseeable future. Moreover, as these systems often face no competition, there is a less pressing need for such a transition.

It is essential the Commission recognize that while digital compression may become "available" to all operators at the same time, the issue of "viability" is market specific, dependent on a range of variables (channel capacity, number of subscribers, penetration rate, presence of competitors, financing, etc.) not readily known or available to the FCC. In recognition of these "real world" concerns, the Coalition urges the Commission to adopt a certification process, whereby operators who are not in a position to convert to digital compression technology as the sunset date approaches will be allowed to certify in good faith that they will not be able to meet the Commission's artificial deadline. Upon such good faith certification, the operator would be granted an additional five years to make the required transition. Operators should also be allowed to make a more detailed technical/financial showing if the circumstances of their particular market warrant a longer or even permanent waiver of the sunset rule.

Such flexibility is necessary to ensure the continuation of wireless service and distance learning in small and rural markets, and to prevent unnecessary and counterproductive government intrusion into what essentially is a business decision.

III. WHOLESALE RULE CHANGES ARE NOT REQUIRED TO ACCOMMODATE THE PRACTICE OF CHANNEL LOADING.

The existing rules governing the use of ITFS programming, the scheduling of such programming, the recapture of airtime and need showings need not be modified, and additional regulatory requirements regarding the use and/or scheduling of ITFS programming need not be adopted, in order to accommodate the practice of channel loading. Indeed, channel loading, like channel mapping, does not fundamentally alter an ITFS licensee's rights to and use of its airtime; it merely affords all parties to the process greater flexibility in scheduling certain set amounts of programming pursuant to established FCC rules and FCC approved channel lease agreements. There is no need, as suggested in the Notice, to modify existing rules as concerns the use or scheduling of programming or need showings. Moreover, the current comparative selection criteria already provides for preferences to applicants proposing greater amounts of programming than is minimally required. The safeguards built into the current rules will apply with equal force and effectiveness in a regulatory environment in which channel loading is allowed, just as they have since the FCC approved channel mapping several years ago.

The only refinement to the current rules the Coalition would urge would be for the Commission to clarify that those ITFS

licensees that take advantage of the flexibility inherent in channel loading not be penalized for their decision in the context of a renewal challenge. If the FCC approves the practice of channel loading, common sense and sound public policy dictate that such channel usage may not form the basis of a renewal challenge.

III. PERMISSIVE USE OF CHANNEL LOADING DOES NOT CONSTITUTE A DE FACTO REALLOCATION OF ITFS SPECTRUM.

The Commission's proposal to permit channel loading would not constitute a de facto reallocation of the ITFS spectrum. First, and as mentioned previously, channel loading is no more a de facto reallocation than channel mapping; it is simply a less costly means for distribution of the signal, with no material impact on the ITFS licensee or the viewer. Second, channel loading would not be mandatory, but rather would be permissible at the discretion of the operator and the ITFS licensee. Third, channel loading, as now envisioned by the Commission, would not be a permanent right, but rather would be allowed only for an interim period until compression technology is technologically and economically viable. The non-substantive, permissive and interim nature of channel loading does not fundamentally alter the ITFS licensee's ability to control the use of its channels and, if desired, negotiate for use of more than one channel.

Conclusion

The Coalition urges the Commission to expeditiously adopt rules permitting ITFS licensees to transmit their minimum amount of educational programming on one channel. To the extent channel loading is permitted only on an interim basis, the Commission

should adopt the certification/waiver process advocated herein to take into account market disparities that may preclude or at least delay the use of compression technology in certain areas, particularly in small, rural markets. Finally, the Coalition urges the Commission to refrain from adopting revised or additional rules governing the use and scheduling of ITFS programming. Such changes are unnecessary as the implementation of channel loading in no way compromises an ITFS licensee's rights to and use of its channels, or diminishes the safeguards built into the existing rules.

Respectfully submitted,

**THE COALITION OF CONCERNED
WIRELESS CABLE OPERATORS**

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